

IN THE SUPREME COURT OF FLORIDA

INQUIRY CONCERNING A  
JUDGE NO. 02-487

Supreme Court Case No.:  
SC03-1171

**FOURTH AMENDED PRE-HEARING STATEMENT**

Judge Gregory P. Holder files this Pre-Hearing Statement,<sup>1</sup> pursuant to the Order of the Judicial Qualifications Commission (“JQC”) Hearing Panel Chairman dated February 16, 2005.

**I. BACKGROUND**

On July 16, 2003, the Florida Judicial Qualifications Commission (the “JQC”) filed a Notice of Formal Charges (the “Notice”) to determine whether Respondent plagiarized an Air War College (“AWC”) paper submitted in 1998 (“purported Holder paper”). The JQC’s charges are based upon unauthenticated copies of the purported Holder paper.

The Charges included violations of Canons 1, 2, and 5 of the Code of Judicial Conduct. Judge Holder has emphatically denied all of the charges against him. Judge Holder specifically denies that he violated Cannons 1, 2, or 5 of the Code of Judicial Conduct.

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<sup>1</sup> Discovery remains ongoing and Respondent reserves the right to amend this Statement and the right to file any necessary motions following the submission of this Statement.

After many months of discovery, the documents remain unauthenticated. Indeed, the Air Force officer who graded the AWC papers in the 1997-1998 academic year, Lt Col William O. Howe, has given sworn testimony that he could not authenticate the purported Holder paper (Exhibit A to JQC Notice of Formal Charges "Exhibit A") as the paper submitted by Judge Holder which received a "satisfactory" grade. Col Howe has graded thousands of papers on the topic chosen by Judge Holder, and, admitting that it is impossible to authenticate the documents at issue in deposition, he has identified the purported Holder Paper as well as several other AWC papers as being graded by him when actually the exhibits were artificially generated.

Moreover, witnesses have come forward and have given sworn statements or depositions that the document attached to the Notice of Formal Charges as Exhibit "A" is not the document that Judge Holder gave these witnesses to review in early 1998. Judge Holder and each person who was shown or read the actual AWC paper submitted by Judge Holder to the Air Force in 1998 will testify in a manner flatly inconsistent with the purported Holder paper being authentic.

## II. WITNESSES

### FACT WITNESSES

Witnesses who may be called by Respondent, subject to Respondent's Motions In Limine, include:

Lorraine Nasco – Ms. Nasco will testify regarding Judge Holder's chambers, work habits, writing, and computers; Judge Holder's research, drafting, finalization, submission, and distribution of the AWC paper submitted by Judge Holder in January 1998; and chambers' practices and procedures.

Sylvia B. Morgan – Ms. Morgan will testify regarding Judge Holder's AWC paper (including its preparation and distribution), Judge Bonanno's unauthorized entry into Judge Holder's private chambers, and chambers' practices and procedures.

John S. Vento, Esq., Col, United States Air Force Reserve ("USAFR") – Col Vento will testify regarding the AWC paper that Judge Holder actually prepared and submitted to the Air Force.

James C. Russick, Esq., Lt Col USAFR (Retired) – Lt Col Russick will testify regarding participation in the AWC seminar with Judge Holder and Col Perry; Judge Holder's research for the AWC paper; and the AWC paper that Judge Holder actually prepared and submitted to the Air Force.

Kenneth E. Lawson, Esq., Assistant U.S. Attorney – Mr. Lawson will testify regarding Judge Holder's AWC paper, the Hoard Paper, receipt of Air War College materials, and Judge Holder's reputation for truthfulness.

Dennis M. Alvarez, Esq., former Chief Judge of the Thirteenth Judicial District of Florida (Hillsborough County) – Mr. Alvarez will testify regarding courthouse security, complaints of misconduct and corruption by judges and court personnel in the Thirteenth Judicial District of Florida (Hillsborough County), knowledge of investigations into those allegations, Judge Holder's relationship with other judges, including Judge Alvarez, as well as Judge Holder's work habits and relationship with the media.

Robert H. Bonanno, Esq., former Circuit Judge of the Thirteenth Judicial District of Florida (Hillsborough County) – Mr. Bonanno will testify regarding his and other judges’ relationships with Judge Holder, the circumstances regarding his unauthorized presence in Judge Holder’s private chambers, and the courthouse’s information systems.

Jeffrey J. Del Fuoco, US Army (Reserve), Assistant U.S. Attorney – Mr. Del Fuoco will testify regarding the circumstances surrounding his alleged receipt of JQC Exhibits A and B, his subsequent conduct, the location of related materials, the chain of custody and other events relating to the Exhibits and related materials, testimony regarding an envelope of documents “discovered” in October 2003, and forwarded to the Air Force and the JQC,<sup>2</sup> forensic analysis of the purported “evidence,” Mr. Del Fuoco’s positions at the U. S. Attorney’s Office, and other complaints and evidence he has offered against other members of the legal community.

Jeffrey S. Downing, Assistant U.S. Attorney – Mr. Downing will testify regarding the circumstances surrounding receipt of Exhibits A and B, the location of related materials, the chain of custody and handling of these documents, the envelope of documents received from Del Fuoco in October 2003 and forwarded to the Air Force and JQC,<sup>3</sup> forensic analysis of the purported “evidence,” Mr. Del Fuoco’s positions within the U. S. Attorney’s Office, and Mr. Del Fuoco’s character and reputation for truthfulness.

Col Mary V. Perry, United States Air Force (“USAF”) – Col Perry will testify regarding the Air War College seminars that she attended with Judge Holder, the AWC paper she wrote and submitted, and the distribution of her paper.

Col Dixie Morrow, USAF – Col Morrow will testify regarding the Air War College seminars that she attended, conversations with Judge Holder regarding writing the AWC paper, and practices of AWC students.

Lt Col John Odom, USAF – Lt Col Odom will testify regarding substantive Air Force matters, including, Air Force Promotion Board proceedings, and Judge Holder’s military duties.

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<sup>2</sup> Subject to Judge Holder’s Motion to Exclude and Objections to the Special Counsel’s Pre-Trial Statement.

<sup>3</sup> Same as #2 above.

Col John Powers, USAF – Col Powers will testify regarding his experience as Judge Holder’s supervisor and as to substantive Air Force matters.

Lt Col William O. Howe, Jr., USAF – Lt Col Howe will testify regarding the AWC grading process, his inability to authenticate Exhibit A and related exhibits, and confirmation of certain anomalies in Exhibit A (by deposition, November 20, 2003).

Lt Col Charles A. Howard, USAF – Lt Col Howard will testify to confirm the attendance of Judge Holder, James C. Russick, and Mary V. Perry in the AWC seminar at MacDill AFB in 1997-98, the AWC grading process, Holder’s AWC paper, and the grader’s correspondence to Judge Holder.

Maj Gen Frank Ragano, US Army – Maj Gen Ragano will testify regarding AWC, warnings regarding plagiarism given to AWC students, means to detect plagiarism, and Air Force steps and mechanisms to detect plagiarism.

Detective James Bartoszak, Tampa Police Department (“TPD”) – Det. Bartoszak will testify regarding Judge Holder’s participation in undercover corruption investigations and attendant concerns about Judge Holder’s safety.

Detective Dolvin “Bill” Todd, TPD – Det. Todd will testify regarding Judge Holder’s participation in undercover corruption investigations and attendant concerns about Judge Holder’s safety.

Special Agent Kelly Thomas, Federal Bureau of Investigation – Special Agent Thomas will testify regarding Judge Holder’s participation in undercover corruption investigations.

Col E. David Hoard – Col Hoard will testify regarding the AWC course and his paper.

Judge Gregory P. Holder – Judge Holder will testify regarding the allegations in this proceeding and the background of those allegations, his chambers, his career, and related matters.

Scott F. Peterka, Florida Department of Law Enforcement – Mr. Peterka will testify regarding corruption investigations and related matters.

John T. Crow, Ph.D. – Mr. Crow will testify regarding applied linguistics, applied grammar, stylistic elements of writing composition, and his analysis of the purported Holder paper.

Bruce Dekraker – Mr. Dekraker will testify regarding his analysis of the purported Holder paper and Linda James' analysis of the same.

Matt Kloskowski – Mr. Kloskowski will testify regarding graphic reproduction and Adobe Photoshop.

Patricia T. Williams and/or Walter Williams – Mr. and/or Mrs. Williams will testify regarding printing and graphic reproduction techniques.

Michael S. Musial – Mr. Musial will testify regarding computer technology, computer backup systems, record preservation, and files found on courthouse information systems.

David Greetham – Mr. Greetham will testify regarding backup tapes, computers, and computer files, including computer files found on the courthouse information systems.

Bradley D. Lutz – Mr. Lutz is expected to testify regarding Hillsborough County Courthouse information systems.

Mildred R. Becki Stafford – Ms. Stafford is expected to testify regarding Hillsborough County Courthouse information systems.

William J. Walls – Mr. Walls will testify regarding AWC papers and information and documents he received from Jeffrey Del Fuoco.

Sheriff Charles B. Wells – Sheriff Wells will testify regarding allegations made against him by Jeffrey Del Fuoco, litigation including the Sheriff and Mr. Del Fuoco, and Mr. Del Fuoco's reputation for truthfulness.

Paul I. Perez – Mr. Perez will testify regarding Mr. Del Fuoco's allegations against members of the US Attorney's Office, his positions and status at the office, as well as Mr. Del Fuoco's reputation for truthfulness.

Robert Mosakowski – Mr. Mosakowski will testify regarding Mr. Del Fuoco's allegations against members of the US Attorney's Office, his positions and status at the office, as well as Mr. Del Fuoco's reputation for truthfulness.

James Klindt – Mr. Klindt will testify regarding Mr. Del Fuoco's allegations against members of the US Attorney's Office, his positions and status at the office, as well as Mr. Del Fuoco's reputation for truthfulness.

Robert O'Neill – Mr. O'Neill will testify regarding Mr. Del Fuoco's allegations against members of the US Attorney's Office, his positions and status at the office, as well as Mr. Del Fuoco's reputation for truthfulness.

#### POSSIBLE REBUTTAL WITNESSES

Lt Col Lauren Johnson-Naumann, USAF – Lt Col Johnson-Naumann is a possible rebuttal witness.<sup>4</sup>

#### CHARACTER WITNESSES (Subject to Witness Availability)

Kenneth Ambler, Esq.  
Honorable Lamar Battles  
Honorable William Levens  
Honorable James S. Moody, Jr.  
Timon V. Sullivan, Esq.  
Honorable Martha Cook  
Clifton C. Curry  
Jim Cusack, Esq.  
Richard Mandt  
Gen Chip Diehl (Ret.)

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<sup>4</sup> In addition, Respondent reserves the right to call any fact or character witness as a rebuttal witness.

EXHIBITS:<sup>4</sup>

No.	Date	Description
1	November 19, 2003	Deposition of Lieutenant Colonel Charles A. Howard and Exhibits <sup>5</sup>
2	March 11, 2003	Affidavit of Lieutenant Colonel Charles A. Howard
3	June 9, 2003	Affidavit of Lieutenant Colonel Charles A. Howard
4	November 20, 2003	Deposition of Lieutenant Colonel William O. Howe, Jr. and Exhibits
5	March 10, 2003	Affidavit of Lieutenant Colonel William O. Howe, Jr.
6	August 20, 2003	Affidavit of Lieutenant Colonel William O. Howe, Jr.
7	November 5, 2003	Deposition of Lorraine Nasco and Exhibits
8	April 3, 2003	Affidavit of Lorraine Nasco
9	June 27, 2003	Affidavit of Lorraine Nasco
10	August 31, 2003	Affidavit of Lorraine Nasco,
11	April 16, 2003	E-mail of Lorraine Nasco,
12	December 10, 2003	Deposition of James W. Bartoszak and Exhibits

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<sup>4</sup> List is subject to rulings upon all motions to exclude. By listing item as exhibit, Judge Holder does not waive any objections to the admissibility thereof. In addition, Respondent understands the obligation to notice and exchange “Exhibits” to apply only to evidentiary exhibits, and not to demonstrative or illustrative aids.

<sup>5</sup> Throughout this exhibit list, references to “Exhibits” include both the original documents that are referenced in the deposition and copies of those documents that may be attached to the deposition transcript.



<b>No.</b>	<b>Date</b>	<b>Description</b>
13	October 27, 2003	Affidavit of James W. Bartoszak
14	December 10, 2003	Deposition of Sylvia B. Morgan and Exhibits
15	June 26, 2003	Affidavit of Sylvia B. Morgan
16	December 10, 2003	Deposition of Michael S. Musial and Exhibits
17	September 2, 2003	Affidavit of Michael S. Musial
18		Graded Hoard Paper and accompanying Letter
19	December 10, 2003	Deposition of Dolvin W. Todd, Jr. and Exhibits
20	August 18, 2003	Affidavit of Dolvin W. Todd, Jr.
21	January 8, 2004	Deposition of Walter Williams and Exhibits
22	January 8, 2004	Deposition of Patricia Williams and Exhibits
23	August 16, 2004	Declaration of Bradley D. Lutz
24	October 9, 2003	Statement of Bradley D. Lutz
25	August 16, 2004	Declaration of Becki Stafford
26	October 9, 2003	Statement of Becki Stafford
27	October 25, 2000	Unsealed Grand Jury Testimony of former Chief Judge F. Dennis Alvarez
28	November 15, 2000	Unsealed Grand Jury Testimony of former Circuit Judge Robert H. Bonanno
29	October 3, 2000	Unsealed Grand Jury Testimony of Scott F. Peterka

<b>No.</b>	<b>Date</b>	<b>Description</b>
30	June 3, 2003	Affidavit of Howard L. Donaldson
31	March 6, 2003	Affidavit of E. David Hoard
32	November 14, 2003	Affidavit of Kenneth E. Lawson
33	February 11, 2005	Deposition of Kenneth E. Lawson
34	June 4, 2003	Affidavit of Lt Col Dixie A. Morrow
35	May 28, 2003	Affidavit of Col Mary V. Perry
36	November 12, 2003	Affidavit of Col Mary V. Perry
37	August 5, 2003	Affidavit of Lt Col James C. Russick
38	August 5, 2003	Affidavit of John Sebastian Vento, Esq.
39	May 28, 2005	Deposition of John Sebastian Vento with Exhibits
40	June 20, 2003	Affidavit of James J. Cusak, Esq.
41	June 4, 2003	Affidavit of Lieutenant Colonel John Odom
42	June 16, 2003	Affidavit of Colonel Glenn Spitzer
43	April 19, 2003	Memorandum of Colonel Glenn Spitzer
44	June 4, 2003	Affidavit of Lieutenant Colonel Daryl Trawick
45	June 6, 2003	Notarized letter of Lieutenant Colonel Kirk Granier
46	June 5, 2003	Affidavit of Clifton Curry, Esq.
47	June 26, 2003	Affidavit of Clifton Curry, Esq.

<b>No.</b>	<b>Date</b>	<b>Description</b>
48	July 22, 2004	Affidavit of Patricia Fields Anderson, Esq.
49	August 17, 2003	Affidavit of Patricia Fields Anderson, Esq.
50	June 6, 2003	Affidavit of Sharon Morgan Vollrath, Esq.
51	July 14, 2004	Affidavit of Jerry Hill
52	August 25, 2003	Affidavit of M. Blair Payne
53	undated	Statement of Major Christine R. Bosau
54	August 27, 2003	Letter of Major Kenneth C. Ambler to Gen Thomas J. Fiscus
55		Test Results and Grades from Judge Holder's Air Force Continuing Education Classes: Squadron Officer School, Air Command and Staff College, and Air War College
56		Adobe Photoshop Program and Manual 5.0
57		Air Force Awards Bestowed on Gregory P. Holder
58		Attendance Records of Air Force Continuing Education Classes
59		Course Materials from the Air War College
60		Gregory P. Holder's Air Force Active Duty Records
61		Gregory P. Holder's Application for Federal Judgeship
62		Copy of Purported Holder Paper Received from Jeffrey Del Fuoco attached as Exhibit A to JQC's Notice of Formal Charges

<b>No.</b>	<b>Date</b>	<b>Description</b>
63		Facsimile Transmission of E. David Hoard's AWC Paper to Judge Holder (Exhibit B to JQC Notice of Formal Charges)
64		Commander Directed Investigation, Gregory P. Holder, 16 March 2003 Prepared by Colonel David M. Leta Commander Directed Investigation
65	April 19, 2003	Supplemental Report to Commander Directed Investigation, from Colonel David M. Leta
66	April 18, 2003	Letter of Reprimand, Colonel K.C. McClain to Colonel Gregory P. Holder, with attachments
67	December 5, 1997	Document Retrieved from Courthouse Backup Files of Lorraine Nasco, last accessed December 5, 1997 at 3:46 PM
68		Lorraine Nasco's Attendance Records at the Courthouse
69		Computer files on Courthouse computers and back up tapes, and printouts related thereto
70	November 16, 2001	Judicial Automated Data System Meeting Recap
71	April 17, 1998	AWC Paper submitted by Lieutenant Colonel Mary V. Perry
72	October 2003	Documents found by Jeffrey Del Fuoco in October 2003, Bates-stamped KELjd 1-171
73	October 2003	Purported Holder Paper as contained in Bates-stamped KELjd1-171; (KELjd 112-137)
74	November 2, 2003	Memo from Jeffrey Del Fuoco to Col Thomas Jaster, regarding origin of KELjd 1-171
75		AWC Paper by Mary V. Perry as contained in KELjd1-171

<b>No.</b>	<b>Date</b>	<b>Description</b>
76	November 5, 2003	Deposition of Judge Gregory P. Holder and Exhibits
77	April 29, 2004	Deposition of Judge Gregory P. Holder and Exhibits
78	June 25, 2003	Affidavit of Judge Gregory P. Holder
79	August 18, 2003	Affidavit of John F. Rudy, II
80		FDLE Investigation Report Re Unauthorized Presence In Judge Holder's Chambers
81		Exemplars of Judge Holder's Writing
82	August 29, 2003	Memorandum re: Apparent Ethical and Possible Criminal Violations Committed by AUSAs Robert E. O'Neil and Robert Mosakowski from Jeffrey Del Fuoco to Office of Professional Responsibility US Dept of Justice
83	December 2003	Complaint of Possible Prohibited Personnel Practice or other Prohibited Activity from Jeffrey Del Fuoco, re: Paul I. Perez; James Klindt; and Robert E. O'Neil
84	September 23, 2004	US District Court Motion for Sanctions Against Jeffrey Del Fuoco and Plaintiff's Attorney Craig Huffman for Bad Faith and Extortionate Conduct and Incorporated Memorandum of Law Re Jeffrey Del Fuoco v. Charles B Wells, et al
85	July 30, 2004	Second Amended Complaint Re Jeffrey Del Fuoco v. Charles B. Wells, Sheriff of Manatee County, Larry Bahnson, employee of Sheriff, and Deputy Barry Coleman, employee of Sheriff US District Court Middle District of Florida

<b>No.</b>	<b>Date</b>	<b>Description</b>
86	11/29/2004	Exhibit A State of Florida Elections Commission Confidential Complaint, complainant, Jeffrey Del Fuoco against Charles B. Wells August 19, 2004; Also a Statement in Support of Complaint written 9/23/2004, filed 11/29/2004
87	Sept 28, 2004	Exhibit B Letter from Barbara Linthicum of Florida Elections Commission to Jeffrey Del Fuoco re: receipt of complaint that appears legally insufficient
88	11/29/2004	Exhibit C State of Florida Elections Commission Confidential Complaint, complainant, Jeffrey Del Fuoco against Charles B. Wells states a third party witness as Joseph Burnhart, pursuant to Letter of Sept 28, 2004 filed 11/29/2004, received 10/11/2004
89	October 15, 2004	Letter from Barbara M. Linthicum of Florida Elections Commission to Jeffrey Del Fuoco stating upon review of the complaint, that it is still legally insufficient, and requires more specific reasons for the complaint to be legally sufficient
90		Del Fuoco Email to John Sugg re: retention of Stephen Kohn, Esq. mentions Judge Holder
91	March 2, 2005	Order in Jeffrey Del Fuoco v. Charles B. Wells, etc, et al., US District Court Middle District of Florida
92	August 27, 2004	Deposition of Jeffrey J. Del Fuoco, AUSA and Exhibits
93	August 31, 2004	Deposition of Jeffrey Downing, AUSA and Exhibits

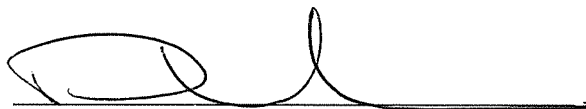
<b>No.</b>	<b>Date</b>	<b>Description</b>
94	March 7, 2005	Affidavit of Colonel Brian D. Bourne
95	May 4, 2005	Deposition of John T. Crow with Exhibits
96	May 4, 2005	Deposition of Matthew Kloskowski
97		Movie files (.avi) demonstrating Photoshop editing capabilities
98	September 10, 2004	Exhibits to Deposition of Bruce Dekraker
99	May 19, 2005	Exhibits to Deposition of Bruce Dekraker (including enlargements)
100		Annotated and unannotated photographs (including enlargements) of both copies of the purported Holder paper and KELjd1-171 documents
101		Computer with word processing applications <sup>6</sup>
102	September 1, 2004	Deposition of F. Dennis Alvarez and Exhibits
103	September 15, 2004	Deposition of William J. Walls and Exhibits
104		Deposition of David Greetham
105		Deposition of Robert H. Bonanno
106	November 8, 2002	Letter from Holder to Department of Justice re status of investigation
107	August 20, 2004	Rule 11 Motion served in Del Fuoco v. Wells

<sup>6</sup> Due to the prohibitively high cost of replication, Respondent is making this exhibit available for inspection at a time convenient to Special Counsel.

No.	Date	Description
108		All documents and materials provided to the JQC by the Thirteenth Judicial Circuit or its agents or employees
109		All texts, publications, and writings referenced in the Deposition and Exhibits thereto of Linda James
110		All computer programs referenced in the Deposition of Richard Kane
111		All documents produced by the Judicial Qualifications Commission or its agents or employees in this matter

Dated: May 31, 2005

Respectfully Submitted,



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## **CERTIFICATE OF SERVICE**

I certify that on May 31, 2005, a copy of the foregoing has been served by Federal Express to: Honorable John P. Kuder, Chairman of the Hearing Panel, Judicial Building, 190 Governmental Center, Pensacola, FL 32501; John Beranek, Counsel to the Hearing Panel, Ausley & McMullen, P.O. Box 391, Tallahassee, Florida 32302; Charles P. Pillans, III, Esq., JQC Special Counsel, Bedell Ditmar DeVault Pillans & Coxe, P.A., The Bedell Building, 101 East Adams Street, Jacksonville, FL 32202; Ms. Brooke Kennerly, Hearing Panel Executive Director, 1110 Thomasville Road, Tallahassee, FL 32303; and, Thomas C. MacDonald, Jr., JQC General Counsel, 1904 Holly Lane, Tampa, FL 33629.

A handwritten signature in black ink, consisting of a large, stylized 'C' or 'G' shape followed by a long horizontal line.

Attorney